Supreme Court, U.S.
FILED

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No.

IN THE

SUPREME COURT of the UNITED STATES

October Term, 1995

ARLIN EDWARD RANEY

Petitioner,

V.

UNITED STATES OF AMERICA

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

ARLIN EDWARD RANEY 04425084
F.C.I. HB BOX 6001
ASHLAND, KY 41105-6001

44 pp

QUESTIONS PRESENTED

1. Did the I.R.S. meet the requirements of compulsory process as intended by Amendment VI furnishing to the appellant:

A. Agent Tish Folsom's notes, testified from to convict?

B. C.I.D.Criminal Investigation Memorandum, to Agent Tish Folsom dated 10-6-89, denying a referral to criminally prosecute appellant, as agreed to in March 1994, a pretrial agreement that certain culpatory or exculpatory evidence would be furnished a minimum of 7 days prior to trial, in order for both sides to adequately prepare offense or defense.

2. Was the I.R.S. and Agent TISH FOLSOM proper not contacting for evidence investigation, the witnesses appellant gave Agent Folsom "Vital" for his defense, the settlement attorney for the IVAKOTA, TAX FREE EXCHANGE ATTEMPT, the $550,000.00 IVAKOTA D.P. ESCROW, Mr. George Webb III esquire and Mr. Darrell Jordon, the owner of the "Victory Financial Group" the actual person who appellant negotiated with for the "LIGNIAPPE INN" who actually owned the "INN".

3. Was appellant's conviction proper for income tax evade and false statements when an appeal, appellant located and presented agent TISH FOLSOM, 4564 personal receipts to appellant breaching her District Court testimony of her notes she testified from alleging "phone calls" and meetings with appellant April and May of 1990 to a phone call in November 1987, an in person meeting on 1-7-88 and, an in

person July 22, 1988 meeting.

4. Did the appellants 1040's furnished on appeal for 1987 filed 4-10-88 and his 1040 for 1988 file 4-15-89 breach the I.R.S. charge, he failed to file and then filed late.

5. Was the discussion in Chambers 6-6-94, before trial on the 1st day of trial "Collateral". "Res Judicata" as to "Double Jeopardy" for tax years 1977, 1978, 1979, & 1980 "TO BE OVERLY CAUTIOUS" a violation of the V Amendment right as to the $6,714,842.00, a $6,200,000.00 judgement increase of tax restitution a proper assessment and liens recorded after appellants sentence of $100,000.00 fine 2 years incarceration & $550,000.00 tax restitution for tax years 1987, 1988 & 1989.

6. Were the dates crucial to conviction as charged breached on all four counts, 3 of evade and 1 of false statements?

7. Is the $6,714,842.00 assessment a violation of the VIII amendment, cruel and unusual punishment?

8. Was the appellant's XIV amendment "Due Process" violated as to:

A. Jury of his peers?

B. His subjective point of view?

C. A conviction by the preponderance of the evidence beyond a reasonable doubt?

9. Was there improper "Prosecutorial misconduct" in the FINAL JURY SUMMATION.

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IV

JURISDICTIONAL STATEMENT

Defendant was tried for and convicted of three counts of income tax evasion and one count of false statements, aiding and abetting on June 9th, 1994 in the U.S. District Court for the Western District of Virginia, Harrisonburg, Virginia, CR-94-3 and appealed to the Fourth Circuit Court of Appeals, 94-5828, Richmond, Virginia which was denied 9-5-95 from which this appeal evolves to the Supreme Court of the United States of America under the Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution as a whole as original jurisdiction to the Supreme Court is conferred not by Congress but by the Constitution itself. California vs. Arizona, 99 S.Ct. 919, 440 U.S. 59, 59 L.Ed.2d. 144 (1979).

i.....6-9-94 U.S. District Court

ii.....U.S. Court of Appeals -4th Circuit

iii.....Rule 29-4-B

Constitutionality of an act of Congress is drawn into question and Title 28-U.S.C. Section 2403 (A) may apply and shall serve the Solicitor General of the United States, Room 5614, Department of Justice, 19th St. & Constitution Ave. N.W. Washington DC 20530 as defined by 28 U.S.C. Section 451.

TABLE OF AUTHORITIES

U.S. CONSTITUTION.
AMENDMENT V, DOUBLE JEOPARDY.
AMENDMENT VI, COMPULSORY PROCESS.
AMENDMENT VIII A. IV CRUEL AND UNUSUAL. PUNISHMENT.
AMENDMENT XIV DUE PROCESS.
U.S. v. Wilson,95 U.S.1013,43L.Ed2d 232(PA,1975).
Virginia Islands v. Scuito CA, 623 F.2d. 869, (Virgin Islands, 1980).
U.S. v. McDanial, 538 F.2d 408, 534 F.2d 76, (CA KY 1976).
U.S. v. Myles, 430 F.Supp. 98, Bred v. Jones 44 L.Ed. 2d. 346 (D.C. 1977).
U.S. v. Nixson, 94 U.S. 3090, (D.C., 1974)Title 26, Section 7201 and Title 18, Section 7206.
Myers v. State, 470 A.2d 355, 57 MD. App.(1984).
U.S. v. Jorn, 91 S.Ct 547, 400 U.S. 470, 27 L.E.2d. 543 (Utah, 1971) Prosecutorial Misconduct.
Ingraham v. Wright, 97 S.Ct. 1401, (Florida, 1977) Cruel and Unusual Punishment.
Mins v. Simpson,391 F.Supp. 1156 (D.C. VA,1975).
Campbell v. Coutron,623F.2d. 503 (CA, Ark.1980).
Peebles v. Bishop,428F.Supp. 864 (D.C. Mo.1977).
Willoughby v. Phend, 301 F.Supp. 644 (D.C. Ind., 1979).
Metz v. McKinly,583 F.Supp.644 (D.C. GA.1977).
U.S. v. Winfield 960 F.2d. 970 (CA, Fla, 1992).
U.S. v. Dawson Canny, 400 F.2d. 194 (1968).
U.S. v. Daniels, 617 F.2d. 146 (C.A. Fla, 1980)U.S. v. Dwaskins, 644 F.2d. 418 (C.A. Fla.1981).
U.S. v. Bishop, 93 S.Ct. 2008, (Cal, 1973).

V-B

U.S. v. Goichman, 407 F.Supp. 980 (D.C. PA, 1976).
U.S. v. Marabelles, 724 F.2d. 1374 (C.A. Hawaii, 1984).
U.S. v. Garber, 607 F.2d. 92 (C.A. Fla, 1979).

VI-A

DOUBLE JEOPARDY EXPRESSIONS

Cannot be tried twice for the same offense. Note: Not penalized twice but tried after acquittal or conviction and against multiple punishment for the same offense; Legal Dictionary.

The underlying premise was generally that a defendant shall not be twice tried or punished for the same offense. U.S. v. Wilson, 95 S.Ct. 1013, 43 L.E.D. 2d. 232 (PA, 1975).

Purpose of the clause is to require that a person be subject to the experience of a criminal proceeding only once for the same offense. Bried v. Jones, 95 S.Ct. 1779, U.S. 519, 44 L.Ed.2d. 346 (CA, 1975).

Protects against repeated prosecution and multiple punishments. Virginia Islands v. Scuito CA, 623 F.2d. 869, (Virgin Islands, 1980).

Protects against Government Harassment by Multiple Prosecutions. U.S. v. Wilson, 534 F.2d. 76, (Circuit Court of Appeals, KY, 1976).

While double jeopardy, res judicata and collateral estoppel are often used interchangeably, each has its own separate meaning. Double jeopardy is derived from the clause and res judicata and collateral estoppel of the civil origin and are of two sub-categories or manifestations of the clause. Res Judicata refers to "preclusion" of claim or cause of action, where the claim has or "could" have been "fully" litigated and decided in prior suit where as collateral involves preclusion of claim where material issue was litigated and decided in prior suit though that prior suit may have involved total different cause of action. Meyers v. State, 470 A.2d. 355, (Md. App. 1984).

VI-B

COMPULSORY PROCESS

In violation of Amendment VI, compulsory process: "It is essential that all" relevant and admissible evidence be produced." U.S. v. Nixon, 94 U.S. 3090, (D.C., 1974).

A. **Folsom Notes**: By pretrial agreement (transcript on file) the prosecution agreed to furnish certain "Jenks" convictable or exculpatory evidence seven days before trial. Agent Folsom's notes, the agent testified from "convicted him" and failure to deliver their "notes," the defense had no time to "investigate" to prepare a defense. That the contents of Agent Folsom's notes as she testified to was "gross error" or mistake as to "alleged first contact by phone and meetings with appellant in April or May of 1990 falsely leading the jury to believe appellant was covering up 1987, 1988 and 1989 1040 crimes, when these notes could easily have been breached by the agents own receipts (4564) to appellant showing otherwise.

B. **Exculpatory Evidence**: The March, 1994 pretrial agreement "Jenks" to furnish seven days before trial encompassed the exculpatory evidence, the rejected referral by Agent Folsom in the form of a Memorandum to her from the C.I.D., Criminal Investigation Division, "rejecting Agent Folsom's proposal" that also mentioned tax years 1987 and 1988 and prior years if the prosecution statement it referred to "prior" years as to whether this $6,714,842 assessment evolved from. This claim of exculpatory evidence is recorded by transcript of chambers discussion, (First day of trial, June 6, 1994 transcript on file.
DISTRICT COURT TRIAL TRANSCRIPT ON FILE.

VI-C

APPELLANTS INFORMAL APPEAL ON FILE.
APPELLANTS INFORMAL APPEAL REBUTTAL ON FILE.

CRUEL AND UNUSUAL PUNISHMENT

This Amendment precludes punishments which are grossly disproportionate to the severity of the crime. Estelle v. Gamble Tax, 97 S.Ct. 285 (1976), Metz v. McKinley, 583 F.Supp. 683, (DC, GA, 1984).

Cruel and unusual punishment clause of this amendment was designed to protect those convicted of crimes and circumstances criminal process in three ways: It limits the kinds of punishment that can be imposed on those convicted; it prescribes punishment grossly disproportionate to the severity of the crime; and it imposes substantial limits on what can be criminal punishment as such. Graham v. Wright, 97 S.Ct. 1401 (FL, 1977).

Constitutional standard of cruel and unusual punishment is not readily adaptable to precise methamotive application; it depends on a careful analysis of the totality of the circumstances. Mins v. Simpson, 391 F.Supp. 1156, (D.C. VA, 1975). Peebles v. Bishop, 428 F.Supp. 864 (D.C. Mo. 1977).

VI-D

FALSE STATEMENTS

Affirmative act constituting evasion or attempted evasion of tax occurs when false statements are made to Internal Revenue Service after the tax was due and on allegation effect satisfies affirmative act element of the offense. U.S. v. Winfield 960 F.2d. 970 (CA, Fla, 1992). Assuming that affirmative act means the signing and filing of the 1040 form.

PROSECUTORIAL MISCONDUCT

U.S. v. Jorn, 91 S.Ct. 547, 400 U.S. 470, 27 L.Ed. 2d 543 (Utah, 1971).

WILLFUL CONDUCT - INTENT

Willfulness in tax offenses refers to a "bad" purpose or "evil" motive to do a thing which the law "forbids"; negligence, even gross negligence is not sufficient to establish willfulness. U.S. v. Goichman, 407 F.Supp. 980 (D.C. PA, 1976).

Willfulness element of offense of income tax evasion requires showing of specific wrongful intent to avoid "known" legal duty. U.S. v. Marabelles 724 F.2d. 1374 (C.A. Hawaii, 1984).

To sustain conviction for income tax evasion, it is not enough to show merely that a lesser tax was paid than was due, nor is a negligent, careless or "unintentional" understatement of income sufficient; government must "demonstrate" that the defendant "willfully" concealed and

"omitted" from her return income which she "knew" taxable. U.S. v. Garber 607 F.2d. 92 (C.A. Fla, 1979).

GOOD FAITH - INTENT - SUBJECTIVE - VIEW

Failure to instruct jury in prosecution for willfully attempting to evade income taxes, that it could "credit" defendants "good faith" defense even if his "beliefs" were not "objectively reasonable" as long as they were "actually" held in "good faith" was plain error heightened by "Prosecutors Comments during summation" U.S. v. Pabisz, 936 F.2d. 80 (New York, 1991).

Tax offense willfully is not met if a tax payer has relied in "good faith" on a "prior decision of the Supreme Court." U.S. v. Bishop, 93 S.Ct. 2008, 412 U.S. 36 L.Ed. 2d. 941 (Cal, 1973).

SPECIFIC INTENT-FRAUD - MISTAKEN BELIEF

Specific "intent" is a necessary element of offense of income tax evasion and filing of "false" returns. U.S. v. Brown, 411 F.2d. 1134, (C.A., Kan. 1969).

Fraud of a tax payer is not presumed and proof of it must be made by clear and convincing evidence showing actual and intentional wrongdoing on the part of the tax payer with specific intent to evade the tax [Appellant note: not "save tax"] Breland v. U.S., 323 F.2d. 492 (C.A., Miss., 1963).

A tax payers "mistaken" belief that his method of

recording income is proper is a defense to a charge of income tax evasion since requirement of willfulness is missing (lacking). U.S. v. Colacurcid, 514 F.2d. 1, (C.A., WA, 1975).

CRUCIAL DATE

"Crucial date" in prosecution of income tax of false and fraudulent income tax returns "is the date" when tax return is "filed" since crime for income tax evasion "occurs" when return is filed. U.S. v. Dawson Canny, 400 F.2d. 194 (1968).

RESONABLE DOUBT

"Reasonable doubt", "Willful," specific intent. U.S. v. Daniels 617 F.2d. 146 (C.A. Fla., 1980).

Defendant filed his 1987, 1988 and 1989 1040 tax returns timely. He filed the 1987 1040 on April 10, 1988. He filed the 1988 1040 on April 15, 1989 and he filed the 1989 1040 on April 15, 1990. Defendant was charged to have committed the 1987 tax evasion crime in 1989, the 1988 tax evasion crime in 1989 and the 1989 tax evasion crime in 1990 and the false statements in April or May of 1990.

JURY JURISDICTIONAL DISTRICT

Accused shall enjoy the right of trial by "impartial jury" of the state and district where the crime shall have been committed,Amendment VI Act, Procedural rights, which

district shall have been previously ascertained by law and to be AMD-VI A-3l-02 CL3. U.S. v. Males, 715 F.2d. 568 (C.A., FL, 1983), U.S. v. Chestnut, 399 F.Supp. 1292, (D.C. NY, 1975), State v. Pruite, 564 P.2d. 598, 895/Art 3 233 F.2d. 870 (1977). Local conditions surrounding criminal act 731 F.2d. 758.

COLLATERAL ESTOPPEL

Collateral in criminal trials is an integral part of the prosecution against double jeopardy guaranteed by Amendment V and Amendment XIV. Harris v. Washington, 92 S.Ct. 183, 404 U.S. 55, 30 L.Ed. 2d. 212 (WA, 1971).

Collateral agreement E.T. Dupont De Nemours and Company v. Union Carbide, 250 F.Supp. 816, 819 (D.C. Ill).

STATEMENT OF FACTS

The appellant is honorably discharged from the U.S. M.C.R. July 24, 1946 as a disabled veteran of World War II beginning service December 24, 1943 by conscription, having seen service in the South Pacific theater for 19 months. Under the Disabled Veterans Special G.I. Bill of Rights, he returned to school and obtained a G.E.D. He later obtained a commercial pilots license and flew for United Airlines as a Captain Boeing 727 until January, 1972 when he retired to continue both flying as a certified airplane flight instructor and self-employed real estate broker of his own firm "Arlin Realty" a one man, basically raw land operation, studying the rezoning and development of land, taking his own advice, he purchased small 1, 2 acre tracts until ultimately purchasing a 245 acre raw tract in 1980 for $550,000 total price, $50,000 down and five years for the balance known as the "IVAKOTA" tract located in Fairfax County Virginia near Clifton.

In 1975, appellant purchased a 3 1/4 acre commercially zoned, raw tract located in Prince George's County, Maryland near Laurel for $1.00 a square foot for a total purchase price of $142,500 plus a 1/3 interest in a small ten unit motel, that had been converted into small offices for $150,000 located in the town of Manassas, Virginia. The date was about 1982 and was a partnership with George Webb and Matt Webb, brothers. George, an attorney, and Matt, a land title searcher, each having 1/3 interest. I lent each brother $10,000 to cover their share of the $30,000 down payment (later repaid) and I signed for the note

borrowing $120,000. My name is still on that note. The purchase partnership was known as W.W. & R, Webb, Webb and Raney. These three purchases are the basis of appellants criminal conviction for three counts of income tax evasion and one count of false statements and aiding and abetting.

Appellant sold the Ivakota Fairfax County raw tract in two parcels to two different purchasers as follows: A 30 acre tract to Debbie Reynolds and her partner for $300,000 purchase price, $10,000 down, interest only for five years, balance due in full. In 1987, the Ivakota remainder was sold 214 acres to the Northern Virginia Land Company for $1,700,000, $550,000 down, interest only for five years and the balance in full with the express promise of their treasurer Mr. Jeff Rice to participate (cooperate) with appellant in a tax free like type land exchange. The actual contract was signed in 1986 (June or July) and closed (title transfer) March 31, 1987. The appellant wishing to save $300,000 in real estate capital gains taxes contacted Mr. Darrell Jordon in 1986, a part owner of a $600,000,000 insurance conglomerate offering for sale an Inn located in Norfolk, Virginia known as the Lagniappe Inn (a little something extra in caisson).

Mr. Darrell Jordon agreed in principal to trade the Lagniappe Inn for the Ivakota raw land valued at $1,700,000 as a tax free exchange with appellant. Mr. Jordon was one of two owners of the Victory Financial Group who owned the insurance companies that the Lagniappe Inn was titled to, including the various insurance companies. So Mr. Jordon was the owner of the Victory

Financial Group that owned the insurance companies that the Lagniappe Inn was titled to and was one of only two people that could sell or trade the Inn to appellant unless he gave others bona fide authority to sell.

Mr. Jordon in September, 1987 decided not to close the tax free exchange for Ivakota for the Lagniappe Inn in Norfolk. The appellant having transferred title to N.V.Land, 3-31-87 in return for a D.P. signed by Mr. Jeff Rice, treasurer, payable to the Victory Financial Group. Ed Raney, the appellant, as trustee the $550,000 D.P. at settlement received in the law offices of George Webb. Jeff Rice was in attendance all funds being escrowed for delivery to the Victory Financial Group with a certified "personal" check, not Ivakota fund, from appellant payable to the order of the Victory Financial Group as earnest money to bind the tax free exchange by letter of intent, letter returned by Mr. Jordon September, 1987 where the appellant, upon conclusive proof of return of his $10,000 earnest money that the Victory Financial Group would not close, appellant contracted for like type land exchanges to save capital gain tax completing the last transaction with former Judge "Lelay" Henry Clark who he himself was making a tax free exchange of the appellant's purchase from the estate of Mrs. Cline for her three children the Hite River Farm.

The Ivakota proceeds had been completely escrowed to the penny including the early payoff in 1988, the legal problem appellant was to face, the tax free exchange must one, be named in 45 days of title transfer, two, the tax free exchange must be completed in six months time, three the

proceeds of the traded property cannot be used personally period. Defendant/Appellant met all three of these requirements for the N.V. Land. Victory Financial Group. He failed the six months completion of the like type (replacement) tax free transfer of title.

The appellant's intent to complete a tax free exchange is without question, through his settlement attorney George Webb, Mr. Jeff Rice, those in attendance at the Ivakota settlement who arranged the production and delivery to appellant of the $550,000 N.V. Land D.P. held in trust payable to the Victory Financial Group. Mr. Darrell Jordon one of two owners of the Victory Financial Group was holder of a certified check from the appellant to bind the letter of intent to trade.

The appellant was found guilty of no subjective intent, of bad faith as criminal and convicted June 9, 1994 three counts of income tax evasion and one count of false statements, to IRS Agent Tish Folsom by phone evolving from her first phone contact with appellant which occurred in November of 1987 and her first personal meeting with appellant which occurred on January 7, 1988. Agent Folsom who had to testify from her alleged notes as she stated she remembers "nothing regarding appellant," and was either duped by IRS prosecutor that her meetings with appellant at his airport and the first phone call where appellant made the alleged false statement was in April and May of 1990 all proven false by agent's 4564 receipts of intent, a request dated November, 1987 and January 7, 1988 and July 22, 1988 which was the last contact appellant had with Agent Folsom. Her notes that she testified from were

used but not put into evidence but appellant's receipts of these phone and personal meetings were by appellant on appeal. Appellant's conviction of income tax evasion was for the tax years 1987, 1988, and 1989 including false statements regarding the Ivakota tax free exchange attempt found criminal was the subject of the 1984 Reynolds 30 acre and Ivakota 214 acre land transaction covered by IRS suit for tax evasion and false statements by year 1987, 1040 and 1988 1040 where the 1989 1040 covered the 3 1/4 acre Pumpkin Hill which was sold for $700,000 cash in 1989. And the W.W. & R partnership, also sold in 1989, his 1/3 interest for $60,000, $30,000 cash plus interest only for three years, due in full in 1992 which appellant was convicted as a criminal June 9, 1994 in a four-day trial, after appellant first refused a plea bargain (ridiculous to appellant) for six months incarceration, $400,000 restitution as appellant did not then and does not now recognize criminal guilt, civil taxes due and owing, perhaps, but not criminal intent.

Appellant was sentenced October 12, 1994 to endure two years incarceration, three years supervised release, $100,00 fine and $550,000 tax restitution. Raney self surrendered to Petersburg, Virginia F.C.I. on December 11,1994 where he presently is incarcerated. His wife (divorced now) at the time paid the $100,000 fine February 18, 1995 against Raney's advice and judgment considering the two year family survival, appeal due process and the family's limited funds.

The Fourth Circuit Court of Appeals by a panel of three denied appellant's prayer September 4, 1995, which this

appeal evolves from and on October 3, 1995 the IRS presented to Raney a tax bill for $6,714,842 to include tax years 1977, 1978, 1979 and 1980, copies attached. These years were not litigated in the IRS suit. Infact, a C.I.D. memorandum rejected Agent Tish Folsom's criminal referral October 6, 1989 for prosecution to include these years as testifed to by the prosecutor in Judge's chambers on the first day of trial where appellant's counsel first learned of Agent Folsom's referral to and rejection of by C.I.D.

Here and now appellant claims double jeopardy and cruel and unusual punishment. Appellant, contrary to IRS prosecution, filed his 1040's timely for 1987, 1988 and 1989 and without fail. Of note, appellant thought he knew how the IRS exaggerated and made reckless claims only to settle claims later for little, as appellant was audited prior years, steady and continuing 1965, 1966, 1967, 1968, 1969, 1970 1971 and 1972 where two liens were placed on appellant's property, one for $15,000 and one for $10,000 and the final total audit was settled by the IRS for $1,600. Both liens being error. Now believe it or not, on October 3, 1995, a bill for $6,714,842* has been recorded as liens and will wipe out the entire life-time effort of this veteran at age 67 years, cruel and unusual punishment.

The appellant's family, his five year old and six year old blood daughter and son recipient of a family trust that depends on being able to move land for their survival who will be wiped out and made paupers.

The appealed IRS audit began 1985 for tax years 1984, was continuous, ongoing each year through and

*Copy of liens has been lodged with this filing.

including tax year 1992, a seven year audit, illegal as a civil audit (three years) in the State of Virginia where the IRS (C.I.D.) Criminal Investigation Department by memorandum rejected Agent Folsom's Raney criminal referral October 6, 1989 and the Raney audit, if to continue, which it did, was mandated to continue as a civil audit, meaning at the maximum appellant was civily exposed to year 1985 through 1988. The appellant was not notified and, in fact, heard nothing more from the IRS until late 1990 of not the $6,714,842 claims (liens) recorded dating back to 1977, eighteen years and not once was the appellant notified nor of the criminal October 6, 1989 CID rejection and he was supposed to be as the audit was mandated to civil status and by Agent Ted Taylor's testimony you don't have to notify a tax payer of criminal audit, but you do in a civil audit. Appellant was not apprised of any irregularity including civil for the 1987 and 1988 tax years, nor offered a settlement and was actually lured into a safe feeling from the IRS. Appellant confidently filed his 1989 tax return April 15, 1990 in total conflict to Agent Folsom's testimony from her alleged notes of testimony that she first made phone contact with Raney in April of 1990, where Raney's false statements were made that he "completed the Ivakota tax free exchange" a done deal when her own 4564 receipts to Raney showed that call to be November, 1987 and the first meeting January 7, 1988, the second July 22, 1988. And Raney never saw or heard from Agent Folsom again.

Please note Agent Folsom testified she remembered nothing and would have to testify from her notes which she ostensibly did to the jury but each time she or Agent Taylor

stated January 7, 1988, the prosecutor went bananas, changed the subject, stated she was looking at the wrong line or place or document. The point is the appellant was convicted of false statements to Agent Folsom by phone, no substantiating verification based on Agent Folsom's notes by her own testimony she remembered nothing and the agent's own 4564 receipts breached her own notes and recollection as brought out by the prosecution by error, mistake or worse plain prosecutorial misconduct, Agent Folsom left the IRS employment in August, 1990. And notes she produced at trial had to be, if not fabricated, notes to agent Patricia Haynes, a criminal agent who was taking over the appellant's audit. These notes showed something happened in April, May of 1990 probably referring something related to Folsom's resignation in August, 1990 but nothing Raney was aware of or a party to.

There was prosecutorial error or misconduct that Raney never filed or filed late, the 1987, 1988 and 1989 returns were filed on or before due date. And there was prosecutorial error or misconduct purporting to show a year's delay in the filing of the 1987 1040, filed early and a copy used a year later to update a late K-1 by appellant, unbelievably used by the IRS to show he filed a year late, appellant sent a copy of the original to the Fourth Circuit Court of Appeals.

Appellant believes (states as facts) that "The accused shall enjoy the right of public trial by impartial jury of the state and district where the crime shall have been committed." Fairfax County, Virginia and Prince George's County Maryland, both locations suburbs of the fast

developing high rise, high cost, high profit competitive real estate investment market. These rights are claimed to be violated as the very hard working, no matter how genuine, honest citizens of the highest integrity of the farm community (Rockingham County, Virginia) the City of Harrisonburg, population 30,000 is not the same as those of the 1.8 million community of Fairfax County Virginia and Prince George's County Maryland, both bedroom communities of the greater Metropolitan Washington D.C. area.

By Court agreement pretrial in March of 1994, both the appellant and the U.S. Government agreed to furnish to the other certain material on or before a minimum of seven days before trial, known to defendant appellant as the Jenks material to be any material that the prosecutor intends to use as evidence to convict, here stated as Agent Folsom notes produced on the first day of trial. The only evidence except Folsom's testimony that could and did convict appellant of false statements also the prosecution agreed to produce any exculpatory evidence in their possession on or before seven days of trial they did not. On the first day of trial, the C.I.D. rejection of Agent Tish Folsom's criminal referral to C.I.D. dated October 6, 1989 was revealed by the prosecution seven days late, discussed in chambers in violation of the March, 1994 pretrial agreement (transcript on file). Appellant does now and appellant's counsel then claimed exculpatory evidence that in the minimum referred to tax years 1987 and 1988 as well as to past years that appellant had not time to investigate, prepare for as to defense or properly use, as in the Agent Folsom notes, in

violation of the March, 1994 pretrial hearing agreement and in violation of Amendment VI. Compulsory process "It is essential that all relevant, admissible evidence be produced." United States v. Nixon and timely where now appellant is further injured by assessments and recorded liens for $6,714,842 for the 1977, 1978 1979 and 1980 tax assessments 16 months after trial (liens recorded) evolving from prior tax years appellant was not charged, tried or convicted for even though the C.I.D. Folsom referral was rejected back on October 6, 1989 mentioned at trial as rejected prior years (not 1987, 1988 or 1989) covered up in chambers as a casual after thought (to be overly cautious) in impossible liens $6,714,842 and a violation of his civil rights, double jeopardy both in trial and punishment prohibited by the Fifth Amendment, a citizen cannot be tried twice for the same offense after acquittal or conviction and against multiple punishment for the same offense.

Further the $6,714,842 liens inclusion after C.I.D. rejection October 6, 1989 before trial when IRS had ample time and opportunity and duty to pursue did pursue by the Agent Folsom referral to CID where then the CID rejected the Folsom criminal proposal, so since the appellant was sentenced to two years, $100,000 fine and $550,000 restitution to suffer three more years of supervised release, the Constitutional prohibition against cruel and unusual punishment is invoked by appellant.

Also as ridiculous as it may seem, the prosecution knows that I suffer from colon cancer. The trial was delayed for appellant's operation. The cancer malignancy is referred to as a Dukes C-2 after removal along with a

section of colon August 13, 1993. And then appellant should never have been incarcerated. Also appellant is innocent of any criminal intent, by appellant's good faith, appellant's subjective point of view, no matter how unreasonable, subject to appellant's genuine point of view and state of mind, appellant tried desperately to make the tax free exchange (trade) for the Lagniappe Inn in Norfolk, Virginia and appellant's intent to gain by that tax free exchange not only for the coveted Inn but to save capital gain income taxes in the process, is not criminal unless done in association to committing a fraud denying a rightful tax. There are many tax deductions denied and none of them are criminal unless a criminal intent is involved. The intent to save on taxes under the rules is not criminal, and, in fact, is inspirational as well as good business.

ADDENDUM TO STATEMENT OF FACTS

Appellant suffers additional punishment by the domino effect of the outrageous $6,714,842 IRS assessment hand-delivered to appellant in prison October 3, 1995 for tax years 1040 (1977, 1978, 1979 and 1980). He was never charged, tried or convicted for, at trial referred to as a C.I.D. rejection for prior years to include 1987 and 1988 is that one, appellant is incarcerated and therefore at law "incompetent" to act for his family's defense or his own. Two, appellant is keenly aware of annual inflation of dollars and land values. Appellant therefore positioned his family's trust in a land oriented inflation hedge position (a lot of land with reasonable, but limited cash) by choice as a protection

against inflation. The land taxes and family's living costs are paid by the source of selling ocasional parcels. Three, the recorded liens $6,714,842 is an impossible obstacle for family to overcome. And the appellant is further impacted by certain mortgages if not paid are lost to foreclosure. Four, the liens are so cruel (excessive) that appellant cannot get releases to sell individual parcels so to meet these expenses to protect his family's trust whose owners are his five and six year old blood son and daughters and their mother the acting trustee of appellant's children's non-revocable family trust cannot extend to appellant funds for a tax expert attorney for appellant's defense. Six, appellant's life time of labor may be wiped out either way unless appellant can arrange financing to repay loans secured by the land encumbered by the IRS $6,714,842 liens when the forced sales price of all of the land would bring far less than half of the recorded liens.

This is cruel punishment to an unbelievable degree, a life time of diligent labor of a 67 year old appellant with slim chance by time of recovery, excluding illness. But more important is appellant's legacy to his children, their present and future environment, their education and consequently their perhaps futures.

Appellant has endeavored to improve his family tree, that is what this innocent W.W.II. U.S.M.C.R. Veteran had in mind, the American dream, life, liberty and the pursuit of happiness, for which appellant believed in and fought for between December 24, 1943 through June 24, 1946 And this Country and Supreme Court owes all of its citizens, including this Veteran, protection of his Constitutional

rights and educated beliefs of the potential obtainable dream which was essential (the dream) in order for appellant to labor, to self-sacrifice, in order to accomplish the building of appellant's children's legacy, in order to perpetuate their better life, liberty and pursuit of happiness all potentially wiped out by double jeopardy, cruel and unusual punishment and by an unsuspecting honest jury.

But not one of the appellant's jurisdictional peers by district and location of crime convicted and because of false statements from Agent Tish Folsom, by error or not and worse by false statements in summation by the prosecution (at least 25), and this final statement belongs in the arguments, however, appellant read law today in Section 7206, false statements and just realized that this section also deals with the 1040 form as signed as well as the Verbal to Folsom false statement appellant only previously considered and now the prosecutorial misconduct at trial and summation take on a new light of the alleged (never happened) April or May of 1990 Agent Folsom's phone and personal contacts with appellant when appellant is alleged to have made false statements (never happened) in April or May of 1990 was essential for conviction for two reasons: One, false statements, either verbal or pen can not happen until the tax payer's 1040 is signed and filed and two, therefore, the jurisdiction as to date and signature would also be affected (false statement) according to the 1040 time and date of statement to Agent Folsom. So the effort by the prosecution to show the 1040 was filed late, beyond 1987, a year alleged late but actually filed early, April 10, 1988 for 1987 1040 and April 15, 1989 for the 1988 1040. So the

1989 1040 (Folsom and IRS written false statement prosecution had to be after the April 15, 1990 appellant's 1040 filing and signed dated).

This being so, then IRS, to convict the appellant for false statements verbal had to go beyond the criminal 1040 submitting date of April 15, 1990 (law state date) whether by error, mistake or prosecutorial misconduct as the formal charges alleged by the IRS were dated in error March, 1989 for the timely filed 1987 appellant's 1040 and in error mid-1989 for the timely filed 1988 1040 and April 15, 1990 correct for the 1989 1040. So, obviously to appellant the prosecutor had to cover his own mistake, error or belief.

The prosecutor covered up by false statements and/or error and perhaps confusing or fraudulent Foslom's notes and, if there were Folsom's notes and some how I believe there were (maybe I am naive) because Agent Folsom testified she "remembered nothing" and had to refer to her notes which were breached by the appellant submission to the Fourth Circuit Court of Appeals of Agent Folsom's actual 4564 receipts to him showing a November, 1987 phone contact, a 4565 January 7, 1988 meeting at the airport and a July, 1988 (by 4564) meeting at the airport in New Market, Virginia both attended by Agent Taylor who stated Agent Folsom, the trainee, had to keep the record. These are statutory violations to be sure, but appellant is innocent any way as further outlined in the arguments and conclusions.

ARGUMENTS

The appellant was audited for seven consecutive years and not once presented a bill or informed of irregularity in his methods of computing income tax. Appellant was referred by Agent Tish Folsom a civil tax audit agent to IRS Criminal Investigation Division (C.I.D.) for sanctions, the agents criminal referral was rejected October 6, 1989 by a C.I.D. memorandum to Agent Folsom. The audit was supposed to be over criminally and proceed civilly at least for the past years and of prime consideration future years beyond October 6, 1989 (1990) was unknown, just two months away from appellant's 1040 filing date. Under IRS rules, a rejected C.I.D. criminal referral is to continue as a civil audit.

Appellant was not notified or consulted about his potential civil taxes due and owing. Agent Foslom's last contact with appellant was July 22 of 1988. Her October 6, 1989 C.I.D. referral was rejected, Agent Folsom was resigning from the Revenue Service in August of 1990. There was no contact by Agent Folsom with appellant in 1989 or ever again, not in 1990 when appellant filed his 1040 timely April 15, 1990 for tax year 1989. Both 1987 and 1988 1040s were filed timely and rejected as criminal, why? Appellant believes the tax audit never returned to civil status as C.I.D. ruled that the notes used at trial purporting that appellant made false statements to Agent Folsom in April or May of 1990 by phone was in fact notes to Patricia Haynes, that the prosecution, in their haste or

inclination to prosecute, was confused and interpreted the notes by error, which even at trial date confused appellant's counsel as to the false contact April or May of 1990, Folsom's phone (first contact) with appellant, used now by mistake or error by the prosecution that appellant did, in fact, have a phone contact or meeting with Agent Folsom, where the jury would believe that appellant "long" after the Ivakota trade endeavor had failed in September of 1987, that appellant was in April and May of 1990 lying, making false statements to Agent Folsom by phone that this was appellant's first phone or personal contact and that appellant was "covering up" the truth in 1990 by false statements, putting doubt in the jury's mind of appellant's real intent and good faith that the Ivakota trade was a bona fide, legitimate tax saving effort that failed through no fault of appellant and the Ivakota escrow fund waiting for delivery to the Victory Financial Group for the Lagniappe Inn was genuinely put back into land for a tax free exchange to save taxes was false, not in good faith. What this Court must realize is that Agent Foslom's own signed and dated receipts to appellant (receipts now in evidence) breaches her sworn testimony, her recollection as she testified to from notes and the prosecutor, in error, claimed; there are three Agent Folsom 4564 receipts, that "show" a first phone contact with appellant in November of 1987 and a first in-person meeting on January 7, 1988 when no 1987 1040 had been filed and on July 22 of 1988, three months after the 1987 1040 was filed, the second (March airport meeting) was by others all of these in person meetings were at appellant's New Market airport and included Agent Folsom's mentor,

Agent Ted Taylor who testified very effectively and claimed Agent Folsom as trainee was responsible to keep the record (date and time of meeting).

This appellant has pondered how and why he was convicted of income tax evasion when he was supposed to enjoy the presumption of innocence, the burden of proof was squarely on the government who must prove his guilt beyond a reasonable doubt and by a preponderance of the evidence that must show willful intent, affirmative act, a substantial tax due and owing. Where appellant merely had to show his "intent" of good faith (no matter) according to appellant's subjective point of view, a good faith, no matter how unreasonable.

Well, at the District Court trial the jury and appellant discovered the first two willful act and affirmative act was committed before trial when appellant filled out and mailed his 1040, and all the prosecutor has to do is produce a 1040 that shows a substantial tax due and owning. Now, the civil aspect of tax due on a failed tax free exchange like the 1040 for 1987 that showed a tax free exchange, including the 1988 1040. Both filed timely on or before April 15 would convict or the deduction, denial of 4 3/4% inflation deduction of capital gain profit would convict, where both were legitimate claims, reasonable and certainly defensible subjectively from appellant's point of view, no matter how unreasonable.

Even here, the jury could still find for appellant providing appellant's intent good faith was not jeopardized as being caught in a lie, a questionable truth or false statement to agent Tish Folsom, proven to the jury by

prosecutorial error, mistake or conduct which unquestionably appellant suffered as a result of the false presentations to the jury and of Agent Folsom's notes purporting a 1990 initial phone and person contact indicating the appellant's attempt to cover up a wrong act by a false statement. The jury plainly believed Agent Folsom's 1990 version.

There is also another critical if not fatal in aspect for appellant from the jury's point of view and that is 1040 criminal charges for multiple tax years, which connotes bias, prejudgment from an honest citizen jury that their beloved government would not intentionally bring multiple charges as in prosecutorial misconduct to make a conviction easier if it were not substantially true. Where there is smoke, there must be fire. For one year the jury gives you the benefit of the doubt, but for three years in a row, no.

There is or was nothing wrong with appellant's jury (except jurisdiction) who if they had understood the criminal C.I.D rejection and the prosecutorial error or misconduct showing false statements in 1990, a false statement to cover up appellant's crimes, instead of a 1987 verified phone contact breaching agent Folsom's notes, a phone contact in 1990, this appeal would not be necessary, the jury would have been appalled as the appellant was.

Appellant's willful and affirmative actions had intent to save capital gain income tax when appellant contacted Darrell Jordon in 1986, an owner of the Victor Financial Group who owned the insurance companies who held the title to the Lagniappe Inn in Norfolk, Virginia which was

offered for sale and offered to appellant by Mr.Darrell Jordon for the proceeds of the Ivakota land in a tax free exchange which never should have been presented by the IRS to a jury as criminal intent to cheat the U.S. government, as a scheme invented by the taxpayer. The scheme, rule or law of a tax free exchange is the U.S. government's idea for all taxpayers and the appellant's attempt to do a tax free exchange continued though the Inn failed. The escrow for land did not and was beyond a reasonable doubt and no doubt to appellant and Darrell Jordon. His intent, if known only to him was not shown to be criminal by a preponderance of the evidence which favored appellant except appellant's "intent" to save taxes was prejudiced by the prosecutorial error and the Folsom's notes alleged contact in April of May of 1990, later breached by her own receipts but not available at trial.

Appellant encourages this Court to note Agent Folsom never contacted appellant's settlement attorney, Mr. George Webb who had all of the information and his identity, phone number was given to agent Folsom by appellant. Why didn't she? Why did Agent Folsom not contact Mr. Darrell Jordon of the $600,000,000 corporations who appellant gave her as his negotiator. Appellant gave her his name, address and phone at the January 7th, 1988 meeting even mailed her some information, one of only two owners of the Victory Financial Group. Last, and to use a prosecutorial phrase, don't be confused by appellant's attempt to deduct 12 to 15 years of inflation capped at 4 3/4% per year as a legitimate bonafide loss or cost as the same is true for a county or city assessment of the value of

a tax paying citizen of their home for the determination of tax due. With regularity, counties and cities raise assessments due to inflation (not the taxes by tax rate) giving them more taxes and the citizen pays less income tax because of the inflation induced tax.

Also in evidence is an article from a Harvard University professor of economics who explains that the cost of inflation (not the demand or desirability as to location that "raises prices" of real estate) but "merely" the daily, annual "inflation" rise increase cost is not a profit when sold and should not be taxed. A taxpayer owes it to himself not to cheat himself and anyattempt on the taxpayer's part to deduct legitimate perceived costs from the taxpayer'ssubjective point of view, in good faith, no matter how unreasonable to others is "by law" protected against criminal conviction.

For the above and preceding reasons, statutes, rules and laws, appellant requests this ultimate Court to protect this citizen as the laws and Constitutional law of the land founders intended by finding the citizen innocent of intent to be a criminal and innocent by reason of good faith and innocent by jurisdiction to be twice put in jeopardy and innocent by right to be tried by a jury of his peers and innocent by error or mistake of the facts presented against him, including procedural violation of Jenks, chambers exculpatory pretrial agreements and to reverse appellant's conviction in its entirety sending the incarcerated appellant home, restoring all of appellant's rights and dignity.

Respectfully submitted,

/s/ ARLIN EDWARD RANEY, 004425084
Pro Se FCI HB 113 Box 6001
ASHLAND, KY 41105-6001

REASONS FOR GRANTING PETITION

1. The appellant is criminally not guilty of tax evade or false statement.

2. The Constitutional guarantees of the V, VI, VII, and XIV amendments are NOT DELUTABLE.

3. This appeal is not necessarily to show error or mistake of the lower court, though err it did, but the prosecutorial misconduct throughout the trial is prohibited by the constitution.

4. These constitutional guarantees shall not be infringed on preventing the U.S. Government from harassing the individual citizen.

5. Exclusion of social bias which can not be tolerated, the "intent" of the citizen to save on taxes is not in itself criminal.

6. The Folsom notes, the CID referral rejection, date of charges, manipulation of evidence, $6,714,842.00 recorded lien, multiple false statements by the prosecutor in final summation.

APPENDIX
1-A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

United States of America,
Plaintiff-Appellee,
V. No. 94-5828
Arlin Edward Raney
Defendant-Appellant.

Appeal from the United States District Court
For the Western District of Virginia at Harrisonburg.
James H. Michael Jr., District Judge.
(CR-94-3)

Submitted: April 25, 1995

Decided: September 5, 1995

Before WILKINSON, WILKINS, and HAMILTON,
Circuit Judges.

Affirmed by unpublished per curiam opinion.

APPENDIX
2-A

Counsel; Arlin Edward Raney, Appellant Pro Se. Alan Hechtkopf, Robert Esten Lindsay, Karen Marie Quesnel, **UNITED STATES DEPARTMENT OF JUSTICE**, Washington D.C.; Ruth Elizabeth Plagenhoef, Assistant United States Attorney, Roanoke, Virginia for Appellee.

2
Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6 Opinion.

PER CURIAM:

The Appellant, Arlin Edward Raney, appeals his conviction of three counts of tax evasion in violation of 26 U.S.C. Section 7201(1988), and one count of making false claims and statements in violation of 18 U.S.C. Section 1001(1988). Raney contends that the evidence was insufficient to support his conviction, that it was reversible error to permit an Internal Revenue Service (IRS) agent to refer to her notes during her testimony, that the prosecution unlawfully withheld exculpatory material, and that his counsel was ineffective. Finding no reversible error we affirm his conviction and sentence.

We review a denial of a motion for acquittal under a sufficiency of evidence standard. Fed. R. Crim P. 29; *United States v. Brks*, 957 F.2d 1138, 1147(4th Cir.), *cert. denied*, 60 U.S.L.W. 3879(U.S.1992). To sustain a conviction the evidence, when viewed in the light most

favorable to the government, must be sufficient for a rational jury to have found the essential elements of the crime beyond a reasonable doubt. *United States v. Brewer*, 1 F.3d 1430, 1437(4th Cir. 1993); *see also Glasser v. United States*, 315 U.S. 60, 80(1942).

Testimony at trial established that during tax years 1987, 1988, and 1989, Raney filed false tax returns by omitting substantial amounts of income from real estate sales and the sale of his interest in a partnership. The transactions resulted in over $1.5 million in unreported income for the three year period, and $415,849 in additional tax due. Based on Raney's manufactured attempts to hide his income and his pattern of under-reporting income, a jury could properly have found that Raney intended to evade payment of his legal liabilities. Additionally, the jury could have inferred from Raney's false statements and submission of false or misleading documents to revenue agents that Raney was attempting to evade his tax liability. *United States v. Beacon Brass Co.*, 344 U.S. 43 (1952).

Next, Raney's claim that an IRS agent's use of notes while testifying was improper is without merit. Raney claims that Agent Tish Folsom's use of her personal notes, written contemporaneously with her interviews with Raney, to refresh her memory was a "gross miscarriage of justice." However, a witness may use a writing to refresh her memory while testifying. Fd. R. Evid. 616. Agent Folsom's notes were not admitted into evidence, and there is no

indication that the jury considered the notes, instead of Agent Folsom's testimony, as evidence. Therefore, Agent Folsom's use of notes, taken during interviews with Raney, to refresh her memory was not improper.

Next, Raney claims that the Government failed to provide exculpatory material pursuant to *Brady v. Maryland,* 373 U.S. 83 (1963). Raney asserts that he was prejudiced by the Government's failure to disclose a possibly exculpatory internal memorandum until the morning before trial. There is no due process violation as long as the exculpatory material is released in time for effective use at trial. *United States v. Smith Grading & Paving, Inc.,* 760 F.2d 527(4th Cir.) *cert. denied,* 474 U.S. 1005(1985) . Raney had the memorandum in time to use it at trial, and did use the memorandum in attempting to impeach Agent Folsom's testimony. Because Raney possessed the memorandum in time to use it at trial, no violation of *Brady v. Maryland* occurred.

Finally, we decline to address on direct appeal Raney's claim that counsel was ineffective. Ineffective assistance of counsel claims should be raised by motion under 2 U.S.C. Section 2255(1988) in the district court and not on direct appeal, unless it "conclusively appears" in the trial record that counsel did not provide effective representation. *United States v. Fisher,* 477 F.2d 300,302(4th Cir.1973). The record does not conclusively show that counsel's actions were ineffective.

We therefore affirm Raney's conviction and sentence.*

APPENDIX
5-A

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

*In light of this disposition, we dismiss the Appellant's motion to expedite his appeal as moot.

AFFIRMED

APPENDIX
1-B

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED

October 2, 1995

No. 94-5828
CR-94-3

UNITED STATES OF AMERICA
Plaintiff - Appellee
v.

ARLIN EDWARD RANEY
Defendant - Appellant

On Petition for Rehearing with Suggestion for Rehearing In Banc

The appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this court. As no member of the court or the panel requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

APPENDIX
2-B

For the Court,

/S/ Bert M. Montague
CLERK

APPENDIX
1-C

UNITED STATES DISTRICT COURT

United States of America,
Plaintiff,

V. No. 94-3

Arlin Edward Raney
Defendant,
June 6, 1994

Defendant found guilty of 3 counts of income tax evade and 1 count of false statements.

Sentenced October 10, 1994 to $100,000.00 fine $550,000.00 tax restitution and two years incarceration with three years supervised release.